

OLC 76-2630
30 September 1976

MEMORANDUM FOR: E. Henry Knoche
Deputy Director of Central Intelligence

THROUGH: Jack Blake
Deputy Director for Administration

FROM: George L. Cary
Legislative Counsel

SUBJECT: Draft Executive Order "Suitability Requirements
for Government Employment"

1. The attached materials have been prepared in response to a request from the General Counsel at OMB for the DCI's comments on a draft Executive Order.

2. The proposed Order, "Suitability Requirements for Government Employment," would relax the standards under which employees and applicants are investigated, and would restrict the types and degree of information into which the investigators could delve. The procedures and standards in this proposed Order are not acceptable as far as protecting foreign intelligence information is concerned. This points out a fundamental problem with the draft Order--it does not make clear that the DCI has the responsibility for protecting intelligence information, including the authority to establish standards for access thereto. Also of serious concern are provisions of the draft Order that would grant Federal employees and applicants certain due process rights regarding notification, adverse actions, and adjudication procedures. These provisions arguably weaken the Director's termination authority under Section 102(c) of the National Security Act of 1947.

3. The attached letter and changes to the draft Executive Order establish our strong opposition. This material, prepared in conjunction with and concurred in by the Intelligence Community Staff, the Office of Security, the Office of Personnel, and the Office of General Counsel, substantially revises the draft Order in order to bring it in line with the Director's responsibilities and authorities. The suggested changes to Section 3(b) and 4 of the draft Order number only two and their purpose is to exempt from the provisions of the Order the Director of Central Intelligence, the Intelligence Community, and access to information under their control (by giving the DCI and the components of the Intelligence Community the authority to refuse to accept clearances

granted under this Order by other agencies or departments). It is believed that this will be the most advantageous method of modifying this draft Order since it is comprehensive, effective, and intelligible.

4. An alternate method of modifying the draft Order would involve line-by-line changes to bring the entire Order into line with procedures and standards acceptable to the DCI. This method was tried and rejected as too cumbersome in light of the complexity of the proposed Order, and considering the many poorly drafted provisions in it. Also, going the route of a blanket exemption would seem to offer the best chance for getting this whole project back to the drawing board as quickly as possible.

5. It will be observed that, even as modified, the draft Order will be sorely inadequate for the needs of the Government and the Intelligence Community. The Order is still complex and ambiguous, and as modified will fail to create the uniformity of procedure that it was designed to establish. Additionally, the Order will create conflicts between the Intelligence Community and other Government agencies since the other agencies will have to substantially improve their security procedures--beyond the standards of the Order--if they wish access to intelligence information. And finally, the proposed Order does not define the standards required for access to intelligence information under the statutory control of the DCI. The Order falls far short of its intended purpose: to create uniform and reasonable suitability standards for Government employment.

6. Neither the Agency nor the Intelligence Community Staff was consulted in the drafting of this Order, and, as far as can be determined, the NSC has not yet been brought into the picture. The Order apparently is being pushed strongly by OMB, the Privacy Committee of the Domestic Council, and DOD (which favors the lower standards, for the manpower and monetary savings involved). Our signals indicate OMB wants very much to have the Order ready before election day, and we apparently will have to fight OMB in attempting to quash the Order or to alter it adequately. Time is of the essence in getting this package to OMB; the General Counsel's office has been rather hesitant in extending the original deadline. Hopefully, as a result of the tack we are pursuing, and given that other agencies and departments (including Justice) are weighing in with serious objections, this whole project will find its way back to the drawing board, where we will be afforded a voice in its drafting. The letter to OMB Director Lynn states the DCI's willingness to participate in such a project.

7. It is strongly recommended by those who have worked on this complicated Order that you or the Director contact Brent Scowcroft, either by telephone or by forwarding a copy of this package to him, as soon as possible to apprise him of the serious problems we have with this draft Order, in an effort to enlist his support in making sure that our concerns will be represented adequately in this matter. The attached letter to OMB Director Lynn, to be signed by the Director, is submitted for your approval.



George L. Cary

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